THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.NO.3347 OF 2001

Dated:26-9-2007

Between:

Nacharam Industries Association
Rep.by its Vice President, Nacharam,
Hyderabad … Petitioners

and

1.The Principal Secretary to
Govt. Municipal Administration and
Urban Development Department,
and others … Respondents

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W.P.No.3347 of 2001

O R D E R:

This writ petition is filed questioning the notification approving the variation to the Zonal Development Plan by the Hyderabad Urban Development Authority, issued in G.O.Ms.No.85 dated 18.3.1998, converting plot No.A-17/4 in S.Nos.45 and 46 of Nacharam Industrial Development area and village to in an extent of 18,995.80 sq.meters, ear-marked as industrial use Zone in the notified Zonal development Plan, as an area for residential use subject to the conditions mentioned therein.

2. The case, in brief, of the petitioners is that the said extent of land of about 20000 sq.meters, notified as Industrial Zone, was originally allotted to Sainik Industrial Co-operative Society Limited, a Co-operative Society registered under the provisions of the A.P.Co-operative Societies Act, 1964, and that the society went into liquidation and at the auction of that land held by the liquidator, 6th respondent who became the highest bidder was given possession of the said land and enquiry made by the members of the petitioner-association, after they came to know that residential houses are being constructed in that land, revealed that the Government changed the nature of use of the land from industrial to residential area on a representation

made to it, and as construction of residential houses in an industrial area would harmful to not only the residents of that area but for the industrial development also, the G.O. converting the nature of use of the land may be quashed.

3.The Deputy Director of Town Planning, Municipal Administration and Urban Development filed his counter-affidavit, on behalf of respondents 1 and 2, contending that by virtue of the power vested in it by Section 12 of the A.P.Urban Areas Development Act (for short 'the Act') the government after it received a representation from the 6th respondent with a "No Objection Certificate" issued by the 4th respondent, called for the remarks from the 3rd respondent, and after remarks from the 3rd respondent were received the proposal for conversion was placed before the committee and that the committee recommended the change of land from industrial to residential, and after taking into consideration the said recommendations, government published a draft notification in the gazettee calling for objections, fixing time limit of 15 days from the date of publication, and as no objections were received in the stipulated period, the draft notification was confirmed under the impugned G.O. and so petitioners, who did not raise any objection for the draft notification, are not entitled to any relief.

4. Secretary of the third respondent, filed his counter-affidavit on behalf of the third respondent on the same lines.

5. The Manager of the 4th respondent, filed his counter-affidavit on behalf of the 4th respondent *inter alia* contending that after issuance of 'No Objection Certificate' in favour of the 6th respondent, 4th respondent re-examined the matter and felt that construction of houses in industrial area

would cause serious harm to the industries and of the inmates of the houses and so 4th respondent vide its letter dated 02.02.2001 informed the 6th respondent that the 'No Objection Certificate' issued by it in respect of the land in question was kept in abeyance, and that the Industries and Commerce Department, vide Memo dated 29.12.1999, also requested the Corporation to keep in abeyance the orders issued in regard to change of land use of the industrial plots.

6. The Managing Partner of the 6th respondent filed his counter-affidavit on behalf of the 6th respondent contesting the petition.

7. On behalf of the respondents 7 to 10, purchasers from 6th respondent, 8th respondent filed his counter-affidavit.

8. The contention of the learned counsel for the petitioner is that inasmuch as the counter-affidavit filed on behalf of the respondents 1 and 2, shows that the G.O. impugned was issued on the basis of recommendation of the 4th respondent, and since the counter of the 4th respondent shows that the 'No objection Certificate' issued earlier was kept in abeyance, the G.O. impugned is liable to be quashed.

9. The contention of the learned Government Pleader on behalf of respondents 1 and 2 is that since the Government, under Section 12 of the Act, has power to alter the plan and since the Government altered the plan only after following due process of law there are no grounds to quash the G.O.

10. Sri E.Manohar, learned senior Advocate appearing on behalf of respondents 7 to 10 filed the affidavit of the Executive Director of the 7th respondent, swearing to the fact that respondents 7 to 10, who purchased

land under a registered sale deed dated 15.12.2003, intend to use the land for industrial purpose only, and contended that inasmuch as respondents 7 to 10 have no intention to use the area purchased by them for residential purposes, no further orders are necessary in this petition.

11. It is no doubt true, as per the provisions of the Act and the rules made thereunder, Government has the power and authority to alter the plan whenever situation warrants, after following the procedure prescribed. It is no doubt true that the Act contemplates draft notification calling for objections being published in the gazettee and if no objections are received, it authorizes issuance of a final notification changing the major use of the land. In this case 1st respondent followed the procedure prescribed. In the circumstances of the case, the factum of petitioners not filing objections before the Government, in my considered opinion, cannot estop them from contending that the G.O. was issued on erroneous grounds, as they may not be having knowledge of the publication of the draft notification of the Gazettee. Though as per law, notification in the Gazettee would suffice, in order to enable persons interested in raising objections for the proposed major changes in the master plan, it would be the appropriate if the draft notification is published in papers having vide circulation also, in cases of importance.

12. In view of the subsequent development of the 4th respondent, re-examining the issue and coming to a conclusion that it would not be desirable to change the use of the land to industrial purposes, I am of the considered opinion that the impugned G.O. is liable to be quashed, more so because respondents 7 to 10 gave an undertaking that they would use the land only for industrial purposes.

13. Therefore, the writ petition is allowed and the G.O. impugned is quashed. Respondents 7 to 10 shall use the land purchased by them only for industrial purposes, as undertaken by them. No order as to costs.

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C.Y.SOMAYAJULU, J.

26th September, 2007.

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THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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26th September, 2007.